AMERICAN MINIMUM WAGE LAWS AT WORK

To the uninitiated student of American standards of living, minimum wage legislation in this country presents a strange anomaly. On the one hand is the continually announced and apparently accepted dictum that for the woman worker a fair wage must be a living wage; that anything less than that constitutes exploitation and parasitism on the part of the industry engaging her; and that to uphold such a living standard among those whose bargaining power is weak, minimum wage laws are universally to be enacted and administered. On the other hand is the inescapable fact that of the fifteen states already having minimum wage laws upon their statute books, only three have in operation any rulings of wide application that the scientific student of minimum standards could term at all adequate. Eight have a series of sub-standard rulings, and the remaining four have none at all.

It will be the task of this paper to set forth some of the reasons for this anomalous state of affairs, to point out the difficulties under which our minimum wage commissions are laboring, and to suggest certain principles of drafting and administration that might bring our practice into closer conformity with our announced theory.

1. *Characteristics of the first minimum wage legislation, Australian and British.* The origin of minimum wage legislation is to be sought not in this country, but in England and Australia. Familiar as this fact is, its significance appears to have escaped popular attention. The first rudimentary organs of minimum wage administration were the District Conciliation Boards of New Zealand, established in 1894 for the compulsory arbitration of labor disputes. Incidental to their general duty of so supervising and directing collective bargaining as to preserve industrial peace, they were given authority to fix minimum wages. The first independent wage-fixing agencies were, however, created two years later in the state of Victoria in Australia. They were called Special Boards, and were at first established experimentally for certain notoriously sweated trades that employed both men and women. These boards were composed of an equal number of employers and employees, with a chairman from outside nominated by both parties. They were given no explicit criterion to go upon in framing their wage awards, but were apparently expected to argue out their difficulties in true collective bargaining style,

under the supervision of the disinterested outsider, their chairman, who was to represent the public interest.

So successful was this system that it was extended to more and more trades, was adopted by other Australian states, and finally, in 1909, by England. The essence of the system is the free discussion of wage standards, by the authorized representatives of both sides, with the aid and criticism of one or more impartial outsiders; the fixing, by this responsible bi-partisan group, of standards that are thereupon compulsory upon all employers in the industry; and the reservation by the government of power to suspend or otherwise mitigate rulings that appear positively unfair or inexpedient. *No definite cost-of-living criterion is set up.* The level of the standards finally fixed will rather depend upon the general temper of the community in which the law is operative and upon the respective bargaining power of the two sides. Thus in Australia, a young and rather radical country, with labor relatively scarce and powerfully organized, the tendency has been for the wages fixed to equal or even exceed the minimum necessary for livelihood; while in England, with its cautious public and overstocked labor market, the tendency, especially in the first years of the law's administration, has been in the opposite direction: the wages fixed, although well in advance of previous rates for the trades concerned, have been as a rule avowedly below the subsistence minimum.

Certain safeguards in the English law itself (Trade Board acts of 1909) have accentuated this difference. In the first place, the provisions of the act could only be extended to other trades than the four originally specified "if they [*i.e.*, the Board of Trade, the general supervisory body that establishes the separate trade board] are satisfied that the rate of wages prevailing in . . . the trade is *exceptionally low*, as compared with that in other employments, and that the *other circumstances of the trade* are such as to render the application of the Act . . . *expedient.*"[1] In other words, boards could not be established unless conditions in the trade were worse even than in neighboring trades, and then only if the financial state of the business was sufficiently healthy. Yet in England, prior to the war, wages in all the great woman-employ-

[1] British Trade Boards act, 1909, sec. 1 (2) (italics mine). This statute and almost all the succeeding ones quoted in this article may be found in *Oregon Minimum Wage Brief*, by Felix Frankfurter and Josephine Goldmark, pp. 1-76. The individual notation of the American laws has therefore been omitted.

ing industries were notoriously low; while the industries that were submerged even beneath this level were extremely apt to be in a declining condition financially. This clause in the law is therefore very interesting as showing that business considerations were explicitly given priority over humanitarian.

In the Victorian statute, on the other hand, these two sets of considerations were, in the last resort, apparently to be considered as parallel and non-interfering—an interesting comment upon the general level of wages apparently contemplated by the Victorian draftsmen. The Court of Industrial Appeals (the final reference tribunal for the separate boards) is to consider, in its review of any ruling, "whether the determination appealed against *has had or may have the effect of prejudicing the progress, maintenance of, or scope of employment in the trade* . . . affected; and . . . [if so] . . . the court shall make such alterations as in its opinion may be necessary to remove or prevent such effect *and at the same time to secure a living wage* to the employees."[2]

Another new safeguard introduced in the English law was the prolongation of the period of initial delay before any ruling could go into effect, together with elaborate provisions for indefinite suspension by the Board of Trade afterwards in case the ruling appeared to them "premature or otherwise undesirable."[3]

So much for the negative features of the English law. On the positive side, we find a centralization of supervisory power in one permanent government body, the Board of Trade, and the giving of great flexibility to the possible scope of the wage rulings themselves: "Those rates may be fixed so as to apply universally to the trade, or so as to apply to any process . . . or to any special class of workers . . . or to any special area."[4]

Both England and Australia make special provision, by individual permit, for infirm workers to receive less than the established minimum.

2. *Growth of American legislation: the Massachusetts and Oregon principles contrasted.* Such was the status of minimum wage legislation when it was first seriously considered by this country in 1911. In that year the Massachusetts legislature passed a resolve requesting the governor to appoint an investigating commission "to study the matter of wages of women and minors, and

[2] Factories and Shops act, 1912, sec. 175 (italics mine).

[3] Sec. 5 (2).

[4] Sec. 4 (1).

to report on the advisability of establishing . . . [wage] boards. . . ."[5] This Commission on Minimum Wage Boards submitted an excellent report together with the draft of a bill which, with certain important modifications, was thereupon enacted into law.

In its original form this Massachusetts bill followed the British and Australian system as closely as American constitutional limitations permitted; but these limitations were of the greatest importance.

1) The American law could apply only to women and minors, since if it were extended to men it would most certainly be held by the courts to run counter to the "freedom of contract" clause of the fourteenth amendment.

2) The American law must beware of delegating legislative functions to an administrative agency. It must therefore clearly define: (a) the conditions under which an industry should fall within the scope of the wage commission at all; (b) the criteria upon which wage awards were to be rendered; (c) the exact relation of board to commission. Since the commission was the permanent supervisory body, the only safe course was, obviously, to centralize all ultimate responsibility in its hands.

The essential features of the Massachusetts bill were accordingly as follows: (1) It provided for a permanent appointive commission, with power: (a) "to inquire into the wages paid to the female employees in *any* occupation in the Commonwealth if the commission has reason to believe that the wages paid to a substantial number of such employees are *inadequate to supply the necessary cost of living and to maintain the worker in health*";[6] (b) thereupon to "establish a wage board consisting of *not less than* six representatives of employers in the occupation in question, of an equal number of representatives of the female employees, . . . and of *one or more* disinterested persons . . . to represent the public . . .";[7] and (c) upon the receipt of a report from the board to "approve any or all of the determinations recommended . . . or (to) recommit the subject to the same or to a new wage board."[8] Once approved, the rates were to be rendered obligatory, after due notice and public hearing, by a formal order of the commission effective in sixty days. Violation of the order constituted

[5] *Resolves of 1911*, ch. 71.

[6] Sec. 3 (italics mine).

[7] Sec. 4.

[8] Sec. 6.

a misdemeanor punishable by fine and imprisonment. (2) The basis of wage determination by the boards was made explicitly the double one of cost-of-living plus financial-condition-of-the-business, with the business considerations evidently taking the priority: "Each Wage Board shall take into consideration the *needs of the employees*, the financial condition of the occupation and the probable effect thereon of any increase in the minimum wage paid, and shall endeavor to determine the minimum wage . . . suitable for a female of ordinary ability. . . ."[9] Apparently it was presupposed that the "suitable" wage finally reached would commonly be below the actual cost of subsistence. Such a view is borne out by the cautious words of the investigating commission's report: "It is the opinion of this commission . . . that in all these industries the wage scale *will stand* a readjustment of rates that will raise the lowest wages to *something nearer* the living wage. . . ."[10]

Even so careful a statute was, however, unable to run the gauntlet of the Massachusetts legislature. Before its final passage the bill was shorn of its most vital portion, the section on enforcement. The "orders" of the commission were changed to mere "recommendations," and the penalty of fine and imprisonment to mere adverse publicity. The recalcitrant employer in Massachusetts is now faced with nothing worse than the publication of his name in certain newspapers; and even this penalty he can avoid if he can prove before a court that "compliance with the recommendations of the commission would render it impossible for him to conduct his business *at a reasonable profit*."[11] Profits, in other words, are avowedly made a "first charge" upon the business.

The weaknesses of this earliest of American minimum wage laws may accordingly be summed up as follows, under the three heads of principle of wage determination, character of wage-fixing agency, and method of enforcement.

a. *Principle of wage determination.* Women (normal, experienced, adult women) shall receive wages just high enough to keep

[9] Sec. 5 (italics mine). It was hoped that the weight given the employer's interests would avoid collision with the "due process" clause of the fourteenth amendment.

[10] *Report of Massachusetts Commission on Minimum Wage Boards*, p. 24 (italics mine).

[11] Sec. 6 (italics mine). As a matter of fact, the commission has not found it worth while to publish such a black-list; instead it occasionally publishes white-lists of such employers as do comply!

them alive and physically well, *provided* their doing so does not threaten to interfere either with the general financial prosperity of the trade or with the "reasonable profits" of an individual employer.

b. The *agency* for the immediate carrying out of these principles is a large mixed board of employers and employees, with in no case more than one fifth of the total membership representing the disinterested public.

c. The sole *means of enforcement* is in the indirect pressure of public opinion. Boards and commission therefore know beforehand that any ruling that threatens to prove burdensome to the individual employer can safely be disobeyed, that anything approaching drastic action will tend to defeat its own ends.

In view of all these limitations it is surprising to find how much has been accomplished in Massachusetts. The mere focusing of attention upon the problem of wages and livelihood appears to have sufficed materially to raise the wages in many submerged trades. The usual process is for the board to thresh out what they agree to be a minimum subsistence budget, and then to see how close they think they can come to that without infringing upon the "financial condition of the business" or (what amounts to the same thing) without incurring wholesale violation of their decree. Usually the wage finally agreed upon lags about a dollar behind the original budget;[12] while this in turn has usually omit-

[12] MASSACHUSETTS BUDGETS AND WAGE DECREES TO JULY 1, 1919[1]

Board	Budget total	Date of budget	Decree	Date when effective
Brush	$8.71	Jan., 1914	15½c. hr.	Aug. 15, 1914
Candy	8.75	Summer, 1914	(no decree)	
Laundry	8.77	Winter, 1915	$8.00	Sept. 1, 1915
Retail stores	(no exact budget)		8.50	Jan. 1, 1916
Women's clothing.	8.98	Spring, 1916	8.75	Feb. 1, 1917
Men's clothing	10.00	Spring, 1917	9.00	Jan. 1, 1918
Men's furnishings.	10.45	Summer, 1917	9.00	Feb. 1, 1918
Muslin underwear.	9.65	Winter, 1918	9.00	Aug. 1, 1918
Retail millinery	11.64	Spring, 1918	10.00	Aug. 1, 1918
Office cleaners	11.54	Spring, 1918	30c. hr. night work 26c. hr. day work	Mar. 1, 1919
Wholesale millinery	12.50	Fall, 1918	$11.00	Jan. 1, 1919
Candy	12.50	June 5, 1919	12.50	Jan. 1, 1920
Canning	11.00	June 24, 1919	11.00	Sept. 1, 1919

[1] From *Sixth Annual Report of Massachusetts Minimum Wage Commission*, appendices 3 and 4; and *Monthly Labor Review*, April and August, 1919.

ted or cut down below the subsistence level a good many necessary items: even so, the minimum is usually a distinct advance over previous rates. Thus in the brush industry, the first to be investigated, the original budget came to $8.71; the legal "suitable" rate was established at 15½ cents an hour, which allowed the average worker to earn about $7.00,[13] but previous average earnings had been below $6.00. The percentage of violations at the end of the first year was gratifyingly low, and has been reported to be decreasing since.[14]

The example of Massachusetts so encouraged progressive groups in various parts of the Union that in the following year eight other states passed minimum wage laws. Of these by far the most important is Oregon's. It has served as a model for the bulk of our subsequent legislation, and may fairly be contrasted with the original Massachusetts statute as showing the growing definiteness and articulateness of the living wage idea.

The Oregon law provides for a central administrative commission and subsidiary boards appointed by it after the Massachusetts fashion, working through the orthodox machinery of public hearings and private investigations and conferences; but this machinery is to be used for strictly living wage ends. Section 1 reads: "*It shall be unlawful to employ women in any occupation . . . for wages which are inadequate to supply the necessary cost of living* and to maintain them in health; and it shall be unlawful to employ minors . . . for unreasonably low wages."[15] Boards and commissions alike are given no other criterion of wage fixing than this simple and explicit one of the "necessary cost of living." No mention is made anywhere of suitability, expediency, or the financial condition of the industry; instead, in every paragraph the cost-of-living basis is repeated in identical words.

[13] This rate was based on the supposition of a 54-hour week, which would here have given the worker $8.37. However, the industry was notorious for its prevalence of short-time work.

[14] It has averaged only about 1 per cent of the employees covered. (*Report of the Minimum Wage Commission,* 1915 and 1917, pp. 14-15 and 32). However, other determinations of the commission have not been so well received. Thus the great majority of laundry employers refused, illegally but successfully (1915-1917), even to allow the commission to examine their payrolls to see what their degree of compliance was (1915 *Report,* p. 15; 1917 *Report,* p. 35); while within the women's clothing industry, the commission reports (1917 *Report,* p. 36), "Complete compliance was found . . . in only about half of the custom dressmaking establishments."

[15] Italics mine.

Once the recommendations of a board have been approved by the commission, they are issued as obligatory orders, binding within sixty days upon every employer in the industry, regardless of his difficulties in meeting them; disobedience is punishable by heavy fine and imprisonment. Moreover, the personnel of the subsidiary boards (here called conferences) is so arranged that impartial decisions are more easily rendered: the whole board is smaller, the representatives of the public have a larger share of the membership, and every board has at least one member of the central commission sitting officially on it.[16] In all these ways the double-standard, collective bargaining, idea—the official balancing of opposing interests—would seem to have given way before that of the living wage pure and simple.

It may well be asked, What could have caused so radical a change in legal principle in one short year? The answer is probably twofold. On the one hand, Oregon is a western state, with more radical views in regard to industry, a relatively small number of women employees, and a radical method of legislation—the minimum wage was an initiative measure. On the other hand, Oregon had the advantage of being the second state to pass such a law: she already had the solid precedent of Massachusetts to go upon; and, since American constitutionalism required the wage-fixing basis to be quite definite in any case, it became relatively easy for the Oregon advocates to insist upon sloughing off the "double-faced" and apparently mercenary elements of the older law.

Of the thirteen statutes that have followed Massachusetts and Oregon, nine may be said roughly to copy the Oregon model, one the Massachusetts model, while three have to be put into a separate category as flat-rate laws.[17]

[16] "Such conference shall be composed of not more than three representatives of the employers in said occupation, of an equal number of . . . employees . . . and of not more than three disinterested persons representing the public and of one or more commissioners" (sec. 8).

[17] Chronologically the laws run as follows:

1912—Massachusetts.
1913—California, Colorado (on the Massachusetts model, now obsolete), Minnesota, Nebraska, Oregon, Utah, Washington, Wisconsin.
1915—Arkansas, Kansas.
1917—Arizona, Colorado (new law, on the Oregon model).
1918—District of Columbia.
1919—North Dakota, Texas.

The gap in legislation that occurred during 1915-1917 was due to long-drawn

3. *Flat-rate laws.* The flat-rate laws differ from both the earlier models in that they operate, not through commissions, but through direct fiat of the statute itself. The different rates for experienced adults, learners, and minors are set once and for all in the body of the law, and apply uniformly throughout the state to all industries specified. The advantages of flat-rate legislation are that it (1) avoids the constitutional difficulty of delegation of powers and (2) is extremely simple and cheap to administer. Its overwhelming disadvantage is of course its lack of flexibility.

The simplest and most inflexible of our flat-rate laws is that of Arizona (1917). It covers all manufacturing, mercantile, hotel, restaurant, and office occupations; and sets for them one simple statewide minimum of $10 for all females, of whatever age or experience.

Somewhat more discriminating is the Utah statute of 1913. It applies to all females in all lines of industry, but sets lower rates for minors and learners than for experienced adults. The adult rate is $7.50 per 54-hour week. These rates were set in 1913 at the passage of the original act and have never been changed since. This is not surprising, since it would take a statutory amendment to do so.

The Arkansas law (1915) at first glance looks like a genuine hybrid between the flat-rate and the commission principle. It sets the same series of statewide rates as Utah, culminating in the same $7.50 for experienced women, but it establishes at the same time a minimum wage commission of the usual type, under the chairmanship of the Commissioner of Labor, to revise the rate by localities or trades whenever it may appear either too high or too low. On the face of it, this would seem a good compromise, combining the advantages of a universal basic rate with those of periodic local adjustment. In practice, however, the periodic adjustment has never taken place: the commission feature of the law has remained entirely unutilized. In consequence, when, in August, 1918, the National War Labor Board was called in to consider the case of the laundry industry in Little Rock,[18] it found the operatives still receiving their 1915 minimum of $7.50 per 54-hour week, and promptly raised the scale some 40 per cent, to

litigation in the Oregon case. The law was finally upheld by a divided opinion of the Supreme Court—Justice Brandeis, as previous counsel for the defense, not voting.

[18] National War Labor Board, Docket No. 233.

$11—an interesting example of the wartime supersession of state by federal agencies.

4. *Commission law on the Massachusetts model.* Nebraska's is the only statute that today still directly follows Massachusetts in its two characteristic features. It has copied verbatim the earlier law's explicit consideration of the "financial condition of the industry," and has adopted in mitigated form its non-compulsory provisions.[19] However, although passed in 1913, this law has never gone into operation.[20] Now that the constitutionality of the more radical type has been upheld in the Oregon case, there seems little likelihood that any other state will recur to the older model.

5. *Commission laws on the Oregon model.* Of the nine laws that, following Oregon, have both enforceable decrees and an unequivocal cost-of-living basis, three have been rendered inoperative for longer or shorter periods of time by litigation connected with the Oregon case, while a fourth has as yet been inactive (according to the commission) because of war conditions.

The new Colorado commission (1917) states that, owing to the war, . . . "there was no cause for complaint from the classes affected by the Act, and consequently this Commission has had

[19] It provides no other penalty save newspaper publicity. However, the publicity is at least made mandatory, not optional with the commission, and the employer seeking exemption from it would have to prove to the court that compliance would endanger not merely his profits but "the prosperity of the business."

The Nebraska law also copies Massachusetts in a less important objectionable feature, namely the requirement of a two thirds majority for all decisions of wage boards. In Massachusetts this has operated as a direct incentive to obstinacy on the part of the employers, since employees and public, even though combined unanimously, could never outvote them. (See, *e.g.*, the account of the disagreement of the Office Cleaner's Board, 1918, in the *Monthly Labor Review*, Apr., 1919, p. 187.) In Nebraska the provision would, however, be mitigated in practice by the companion provision that each board must have on its membership as representatives of the public the entire body of commissioners (four).

[20] In explanation of their failure to put any minimum wage into operation, the Nebraska commission state that no complaints were made: "Since the adoption of the law in 1913, no complaint has been filed with the Commission, and therefore no meeting of the Commission has ever been held. . . . There had been more or less agitation before this Commission was created in 1913, and during the session of legislatures since, but there seem to have been no reports of any kind made" (letter to the Secretary of the American Association for Labor Legislation, July 22, 1918).

very little . . . to do thereunder."[21] As a matter of fact, however, this inactivity may well have been due, at least in part, to a more absorbing interest in matters outside the minimum wage. The commission here is a general State Industrial Commission, with many duties.

The Wisconsin law (1913) also gave the wage-fixing power into the hands of its general Industrial Commission. During 1914-1917, writes their secretary, "this commission believed that little could be gained by establishing a minimum wage scale which would immediately be tied up by an injunction," while for some time thereafter they were hampered by lack of funds.[22] However, now (since August 1, 1919) they have established a state-wide minimum for experienced women and minors over seventeen in all occupations of 22 cents per hour (or $12.10 per 55-hour week).

The Kansas law gives the power of fixing wages into the hands, neither of a minimum wage commission pure and simple nor of a general industrial commission, but of a so-called Industrial Welfare Commission created for the purpose of setting standard hours and conditions of work as well as wages. In this respect it follows Oregon[23] and the other two coast states yet to be cited.[24]

Established as it was in 1915 after the beginning of the Oregon litigation, the Kansas commission has only been operative since March, 1918. The Minnesota commission, established two years earlier, had the advantage of a year's enforcement of its rulings before the opening of the Oregon case, and has just revived those rulings now. Both commissions have evidently suffered from the cooling-off process incident to so long a delay: they declare themselves unable to adjust the recently legitimitized rates to present prices.

"Our first minimum wage went into effect on March 18 of this year (1918)," writes a representative of the Kansas commission.[25] "We consider that . . . [it] is very low. [Their rate for experienced women in stores and laundries is only $8.50, although for

[21] *Second Report, Colorado Industrial Commission,* pp. 127-8.

[22] Letter to the writer, Dec. 12, 1918.

[23] It did not seem necessary while dealing with the Oregon law to point out this additional administrative distinction, since it in no way affects the essential nature of the wage award.

[24] The Washington commission does not have power to fix hours, only wages and working conditions.

[25] Letter to the writer, October 31, 1918 (italics mine).

factories it has more recently been raised to $11.] However, it was as much as the employers on our Board would concede." A representative of the Minnesota commission adds:[26]

The Commission was reappointed on April 1st of this year (1918) [the Minnesota law had finally been declared constitutional three weeks before], and it decided to enforce the wage orders already issued . . . based on the cost of living in normal times in order that the law might go into effect at once. [These rates provided a maximum of $9.00 for experienced workers in first class cities.] If wage rates were to be altered the Commission would have had to make an exhaustive study into the cost of living covering the entire state *because our Attorney General has ruled that wage rates must be state-wide in their effect when established.* This would have meant *a delay of at least six months* in the enforcement of the law.

Two other commission laws, those of Texas and North Dakota, have been enacted only this year (1919), so that no rulings have as yet been issued under them. The Texas law provides for an industrial welfare commission headed by the chief of the bureau of labor statistics, while the North Dakota law, in unique fashion, gives the power of fixing wages, hours, and working conditions into the hands of its state workmen's compensation bureau.

The four remaining commission statutes of a compulsory character have all been enforced from the beginning[27] and have resulted in the four highest sets of rates yet attempted. They belong to the three Pacific coast states (1913) and the District of Columbia (1918). The Pacific states have industrial welfare commissions, while the District of Columbia has a regular minimum wage commission. The language and substantive features of all four are, however, practically identical, the Oregon law having served as a model for the rest.

All four sets of rulings are now based on a 48-hour week. For this, Oregon and Washington fix $13.20 as the minimum wage; California, $13.50; and the District of Columbia, for the two trades with which it has so far dealt—printing and publishing and mercantile—no less than $15.50 and $16.50. All these rates have been either newly set or revised within the past year. (The oldest,

[26] Letter to the writer, Nov. 9, 1918 (italics mine).

[27] Strictly speaking, the California law did not really get under way until after the Oregon decision. During 1914-1915 the commission confined itself to a thorough investigation of wages and cost of living, and in 1916 issued but one order, that on canneries. As soon as the Oregon decision was rendered, however, in April, 1917, the commission sprang into full activity.

Washington's, dates only to November, 1918, while Oregon's did not become effective until October 14, 1918.) The three Pacific coast rates, like that of Wisconsin, are most noteworthy in that, for the first time, they apply uniformly to all trades covered by the law.

Two sets of factors aside from the drafting of the laws themselves, may have contributed to make these four recent sets of rates so high: in the Pacific coast states, a greater readiness to "give women a chance," coupled with a lesser degree of overcrowding in the female labor market; in the District of Columbia, the immediate proximity of the United States Bureau of Labor Statistics, with its wealth of scientific material *plus personal explanation* at the immediate service of boards and commission. However, what is perhaps still more important, all these states have had close contact between commission and local wage board. In California the executive officer of the commission acted as chairman of the recent boards, while in the record-breaking District of Columbia decision, all three members of the commission have actually thus participated.

6. *Definitions of the living wage.* The variation in wording of the living-wage definitions in all the various statutes we have seen passing in review does not, so far at least, seem to have had any direct effect upon the character of the decisions rendered. They run all the way from Kansas' "adequate for maintenance" and "to supply the necessary cost of living" to Minnesota's "sufficient to maintain the worker in health and supply . . . [her] with the necessary comforts and conditions of reasonable life" and Wisconsin's "sufficient . . . [for] . . . welfare"—"welfare" being further defined as "reasonable comfort, reasonable physical well-being, decency, and moral well-being." Almost all the statutes, following the Oregon and Massachusetts precedent, refer to health ("to maintain in good health"), and many add a reference to moral protection or to general welfare or both.

7. *The role of the advisory boards.* Another variation in the wording of the statutes, that does not seem so far to have had any marked effect upon their operation, is the variation in the role assigned the subsidiary wage boards. In some states their appointment is mandatory, in others optional with the central commission.[28] In practice, however, with one exception (Minne-

[28] The new (1919) Texas law alone makes no provision for the calling of such boards.

sota) all the commissions that are actually operative have chosen to do their work through boards.[29]

This may seem rather surprising, since the presence of the boards necessarily complicates and delays every decision. It means a larger, more partisan and less well-informed group of people discussing each issue. However, it also means a group that is closer to the public confidence. The board members are themselves direct representatives of employers and employees, and in educating each other in methods of straight thinking on the wage problem they are at the same time helping to gain that general goodwill without which so new and tentative a type of rulings could not finally succeed.

Moreover, as a purely practical question of time, the overburdened volunteer[30] commissioner in a large industrial state could not afford to go exhaustively into the technical problems of each trade and then sit through a long series of hearings on each. The local board members[31] can divide up this responsibility and pool their information at the end.

Granted, then, that it has proved desirable to retain the services of the advisory boards, the second question arises, What is (or should be) the limitation of their power as over against that of the commission? Once their advice is sought, may it be disregarded? Here interpretations differ. All the states allow the commission to reject a report and resubmit the subject to the same or a new board;[32] but the real question is, May they themselves alter the recommendations without resubmittal?

Certain statutes, such as those of Oregon, Washington, and Kansas, have been interpreted unequivocally to forbid this, and the commissions chafe under the strain. A representative from Kansas writes: "We believe that the Boards are very, very helpful indeed, but—that after the public hearing the Commission

[29] The states in which the appointment of boards is mandatory are Massachusetts, Kansas, Nebraska, and Wisconsin.

[30] In most states the members of the commission are wholly unpaid. In Massachusetts and California alone do they receive a $10 *per diem.* Wisconsin, Colorado, and Utah have general industrial commissions with salaried officers, but their minimum wage work is incidental.

[31] Board members are ordinarily paid a very small *per diem,* usually the same rate as jurors, though in some states they receive nothing at all. Only California pays as much as $5. Even these small amounts, however, form a serious drain upon the all too scanty funds of the commissions.

[32] And all but Minnesota allow them thus to resubmit any part of the subject.

should be able to make such modifications as it thinks necessary and issue the ruling then as final."[33] On the other hand, certain other statutes, notably that of California,[34] plainly leave the alternative of commission action open.

In California, consequently, the commission has taken very useful advantage of its privilege: thus, when the mercantile and laundry boards of 1917 failed to come to an agreement, the commission merely made note of the two conflicting sets of budgets and proceeded to establish a final rate of its own.[35] Surely this is preferable to the Kansas and Massachusetts system.

8. *The composition of the advisory boards.* In dealing with Massachusetts and Oregon we have already referred to the effect of variations in the size and personnel of advisory bodies. Obviously, the larger the board, the greater will be its tendency towards debate rather than scientific analysis. Similarly, the larger the number of partisans as compared to the number of representatives of the public, the less likely is the scientific view to get a hearing. And, finally, the wider the separation of the board from the sources of information accessible to the permanent commission, the less likely is the scientific view even to be understood. The most efficient board is therefore unquestionably one in which the total membership is small, the public being represented equally with the other two sides, and on which in addition at least one member of the central commission sits permanently.

This last requirement is fulfilled in Oregon, Washington, California, and the District of Columbia, the four states as pointed out above whose boards have so far promulgated the highest rates. In Massachusetts the practice of the commission has been to appoint as one representative of the public the permanent paid secretary of the commission, who is known as "the executive officer of the board," and appears to be invested with a good deal more dignity than he is in most states. This may help to account for the relatively good rulings that the Massachusetts boards have issued. Certainly they appear to have been better informed than many

[33] Letter to the writer, Oct. 31, 1918.

[34] The California statute reads: " . . . the recommendation of such wage board shall be made *a matter of record for the use of the commission*" . . .; and then: *"The commission shall have further power after a public hearing* had upon its own motion or upon petition *to fix . . . a minimum wage* to be paid to women and minors. . . ." (secs. 5 and 6, italics mine).

[35] See *Third Biennial Report I. W. C. of California,* pp. 24ff. In both cases this final rate approximated that of the employees.

of our statutorily more fortunate bodies. In the nature of the case, the secretary of a commission is an excellent person to represent the scientific point of view to the other members of an advisory board. He is the one salaried expert who gives his full time to the work of the commission, and should of necessity be more familiar than any one else with all its sources of information. His effectiveness is, of course, further enhanced when he holds full voting membership in both bodies. This has been the fortunate practice of California, where the "woman's representative" on the commission, who acts also as its "executive officer," serves as chairman of each wage board. However, California has the weakness of providing for no other representatives of the public.

9. *Practical difficulties in wage setting: the problem of an adequate original wage.* When it comes actually to fixing a "living wage," American boards are confronted with a whole series of difficulties. In the first place, whatever may be said in the language of the statute itself, every board member knows that in practice the representatives of the employers and all who sympathize with them are bound to take the condition of the industry itself into consideration. What else, indeed, are they there for? If the object of the law were merely to establish an abstractly scientific standard of living for each employee, regardless of its reaction upon conditions of employment and trade in general, why work through representative boards at all? Why not merely have a central executive commission or, better still, a single paid expert whose duty it would be to adjust well established family standards (such as those issued by the United States Bureau of Labor Statistics) to local conditions and the needs of the single woman, revising these standards at appropriate intervals as the cost of living went up or down? In practice every one knows that minimum wage legislation is as yet in a tentative stage, that public opinion is by no means "solid" behind it, and that the work of conciliating and bringing into coöperative relations the members of all parties represented on a board is still by no means the least of its functions. The unequivocal language of our statutes, in other words, is to be regarded rather as a guidepost for further progress than as an index of present achievement, and the most that forward-looking members of boards and commissions can do is to keep its prospect fresh in the eyes of their colleagues. The great majority of representatives of the public at present tend inevitably to side with the employers so far as taking a vivid interest in the financial

welfare of the business goes. Thus questions of interstate rivalry are always favorite topics of discussion—Will such and such a rate put the manufacturers of state *A* at a disadvantage with state *B*? Very few are the representatives of the public who will not give at least some weight to such considerations.

In the second place, the representatives of the employees are seldom of a calibre at all comparable to that of the other two groups. They are themselves, as a rule, working women unaccustomed to mathematical reasoning and unable to express, in a careful and convincing manner, even the facts they have clearly in mind. Knowing beforehand that something in the nature of a struggle is about to take place, they are all too apt either to capitulate prematurely or else to resort to mere sentimental appeals that lose them public confidence. Above all, they are in very many cases unable to plead all the facts they know with even the vigor and skill of which they are capable, because they are afraid of the ill will of their employers. All our laws, to be sure, insert severe penalties for any such discrimination on the part of employers against workers who testify; but indirect discrimination is difficult to trace, and the habit of a self-subordinating frame of mind is not easy to overcome.

Finally, all three groups (the employees of course especially) are apt to be woefully untrained in the handling of budget material: frequently it is difficult for them to grasp the very concept of an average. When it comes to drawing up a supposedly accurate schedule of necessary expenditures, therefore, the chances are a hundred to one that the major items will be listed in their most favorable (*i.e.*, least expensive) light, while many very important minor items will be overlooked entirely. Employees are quite as ready as employers to omit all such items from their calculations—with the result that the budgets to which they agree are commonly several very important dollars short.[36]

The following quotations from representatives of minimum wage commissions may help to illustrate some of the foregoing points.

[36] Thus questions of average medical attention, of average time lost through illness or unavoidable industrial lay-off, of recreation, gifts, insurance, dues, charity, reading matter, vacation, legal holidays, house-moving, postage, toilet supplies, railroad and carfare, extra food, etc., are tremendously skimped. The common practice is to lump a great many of them together under the catch-all "miscellaneous," with the resultant total often smaller than even one or two of its component parts would be if taken alone.

a. The bargaining character of boards; weight given to financial considerations:

The award of $13.20 was really a compromise between the employers and employees who served on the conference, the former having recommended $12 and the latter $15 (Washington).[37]

Evidence is taken at each of the conferences on what the cost of living really is, but, so far, no attempt has been made to verify or sift or tabulate. . . . In the . . . conference the employers fought hard, and the employees were obstinate, so the result was really obtained by bargaining. . . . They (the employers of another conference) suggested that $11 was a fair minimum . . . and the employees threw down their defiance in the shape of a claim that $15 was necessary. . . . When a compromise was suggested in the shape of $13.50, nobody offered the least objection . . . (British Columbia).[38]

The function of the commission in these debates is well summed up by the Washington representative:

In the final session with only members of the board present, the wage question is always a struggle for a decent living by the employee and a struggle to keep down "overhead cost" by the employer, and when it gets to the "bargaining" point (which it always has), the Commission should insist on the text and spirit of the law that the "cost of living" is the basis on which to decide the wage.

b. Weakness in bargaining power of the employees:

We consider that our minimum wage ($8.50) is very low. However, it was as much as the employers on our Board would concede (Kansas).

Our experience (in 1913-1914) was not satisfactory. We found the employers represented their class too well, and they tried to get the minimum as low as possible, with no reference to the cost of living. The rates finally adopted ranged from $8 to $9. The employees were lacking in initiative because of their fear of the employers. One might be able to get better representatives of employees in those communities where women are better organized. The idea of getting men employees to represent women employees might be worth trying . . . (Minnesota).

10. *The time element: difficulties in revising rates.* One of the discouraging things about minimum rate making is that, during a period of rapidly changing prices such as we have had ever since our first American wage laws went into effect, it takes a very short time for a rate to become antiquated.[39] When that happens it is

[37] Letter to the writer, Nov. 19, 1918.

[38] Letter to the writer, Dec., 1918.

[39] Take as an extreme case the calendar year 1917, during which the average (countrywide) increase in living costs was some 25 per cent. By the end of the year a $10 wage would have been worth only $8.

difficult to get the commission to act—to start afresh on the weary round of investigations and hearings and orders. The more thorough the original investigation has been, the more will it necessarily have cost in time and money, and the less funds and energy will there now be in the hands of the commission to repeat the process or any part of it. On the other hand, if the original survey has been cursory, or even if it has been painstaking but inexact, any revision based in the main on those previous findings will incorporate the errors of the old.

Of these two difficulties, Minnesota furnishes a good example of the first, Oregon of the second. In Minnesota the old 1913-1914 rates of $8-$9 have recently been reïssued by the commission, not because any one supposes that a woman can today live on them, but because the complete new statewide survey which the commission considers necessary would take so long to finish that it seemed better to have the old rates as a stop-gap meanwhile. In Oregon the 1918 rates were based exclusively on the rise in living costs since the adoption of the 1915-1916 rates; when, as a matter of fact, the 1915-1916 rates, themselves a revision of the 1913-1914 ones, had been markedly inadequate.[40] By 1919 the lag became so apparent that in August a fresh statewide minimum of $13.20 was enacted.

In distress over the 1918 situation of continuous inadequacy and upheaval, a representative of the Oregon commission wrote:

> There is too much of a tendency to fix the minimum . . . at a bare existence. . . . If we could work out a scientific wage basis and give the Industrial Welfare Commission power to advance that minimum each time the cost of living made a perceptible advance, a lot of the machinery which now must be used would be unnecessary.

To believers in the advantages of representative wage board administration, the concluding suggestion would seem but a counsel of despair. A more hopeful possibility, in the opinion of the writer, would be to give the commission limited power of revision in accordance with the terms of an order, say for a year after the

[40] So far back as 1913 the social survey committee of the Oregon Consumer's League, in a study which was at least more accurate than anything that has succeeded it in the state, had set about $10 a week as a minimum living wage. Yet in 1915-1916 the rates agreed to ranged to only from $8.56 to $9.25. Applying (quite fairly and scientifically) the 34 per cent increase which the figures of the United States Bureau of Labor Statistics and other government agencies showed at the beginning of 1918, to these low rates, the resultant $11.10-11.61 still fell far short of a full living minimum.

order went into effect, at the end of which time the usual conference machinery would have to be resorted to. More important than such a step, however, would be the establishment for the benefit of all our commissions of a thoroughly reliable clearing-house to formulate the basic standards themselves. An elaborate federal agency such as our Bureau of Labor Statistics is of course eminently fitted for such a task. It would be perfectly feasible for them to issue a series of detailed and authoritative standards for self-supporting women, on a strictly commodity basis, as they are at present engaged in doing for families for the various large regional zones in the country that have sharply differentiated costs and customs. These general standards the bureau would of course revise periodically in accordance with the cost of living, so that all that would remain for the state boards and commissions would be to make those purely local adjustments for which they appear to be peculiarly fitted. Even if popular pressure and the exigency of business conditions did drive a given rate temporarily well below the established commodity minimum, it would be with the immense advantage of leaving the basic facts in the case undisguised and undisputed, and the natural burden of proof weighing against the continuance of the objectionable practice.

Pending such a series of federal surveys, much could be done by local commissions in comparing, adapting, and perfecting each other's best standards, and in applying locally all the government figures that do appear. The commission secretaries, if adequately paid and endued with double membership on board and commission as has been previously suggested, could take the lead in this work of standardization and education.

11. *The growing scope of wage awards.* Within the past six months a most remarkable and hopeful development has taken place in the direction of standardization of rates—a standardization within states and between neighboring states as well. Whereas formerly awards have always been made separately for separate trades (and often for different sections of the state), in the latter half of 1919 Wisconsin, California, and Oregon have followed the example (then unique) set by Washington a year ago, in establishing uniform rates for all industries throughout the state. In the case of the Pacific group, moreover, these rates are practically identical for all three states—$13.20 and $13.50 per 48-hour week. For learners, California and Oregon retain trade dis-

tinctions,[41] but for experienced adults the rates all read alike. The significance of this new departure can scarcely be overemphasized. It, more than anything else we have hitherto had to record, marks the breakdown of the old system of local business protection, and the erection of living standards that can be scientifically impartial.

12. *The long view: actual earnings versus hourly rate.* The final difficulty attending the decisions of board and commission is that of equating the nominal wage rate to actual income. Nearly every one would agree, on the one hand, that it would be absurd to pay a woman deliberately choosing part time work a full week's wage. On the other hand, nearly every one would agree that it would be equally unfair to pay a woman engaged for full time work, and required to be on the premises all through working hours, for say only 25 hours of her time, if slack production, perhaps in another part of the factory, kept her machine unexpectedly idle at irregular intervals. But between these two extremes there are many gradations which prove most elusive to handle.

The great majority of our commissions have made no attempt to solve the difficulty. They have frankly adopted the hourly rate scale throughout the industries with which they have had to deal, making no variation for chronically part time or seasonal industries. That is, the so-called "weekly wage rate" they enforce is based on the assumption that *all workers work the full legal number of hours each week:* it is only by so doing that they are to be enabled to support themselves. If they work less, no matter by whose fault, they will receive less than the week's minimum income that has been agreed upon as necessary decently to support life. Thus Massachusetts' order (November, 1918) for the wholesale millinery industry contains the express proviso: "These rates ($11 for the experienced adult) are for full time work, by which is meant the full number of hours per week (54)[42] required by employers and permitted by the laws of the Commonwealth."[43] This

[41] This is quite proper in view of the varying international advantages of different trades. See sections 14 and 15 below.

[42] Since then (1919) the legal hours of work in Massachusetts for women and minors have been reduced to 48.

[43] *Monthly Labor Review,* Feb., 1919, p. 195. In the Arkansas flat-rate law the same principle is expressed even more rigidly: *"All female workers working less than 9 hours per day* shall receive the *same wages per hour* as those working 9 hours per day" (italics mine); while the very recent statewide Wis-

is for one of the most seasonal industries in existence, where almost any one would agree it is impossible to expect the employee to find full supplementary occupation in the short stretches between seasons.[44]

A slightly more hopeful position is shown in two orders of Oregon and Washington. The Oregon order (April, 1918) reads:

When business conditions render it impracticable for an employer to furnish to any employee full time employment (54 hours), the employer shall not be required to pay such employee any greater sum than the hourly wage for the number of hours of actual employment, *provided such employer shall so arrange consecutive hours of continuous employment* that each employee may have a fair opportunity [sic!] for securing such employment as will enable her to earn a full week's wage.

Washington is a trifle more explicit as to what constitutes "employment," but fails to specify that the hours be consecutive. Among the 1915 rulings we read:

(4) When an employee is required to hold herself at certain hours at the call or service of an employer, such hours shall be included as hours of employment.

(5) . . . any arbitrary conditions imposed by the employer which prevent her from earning . . . [a living] wage is contrary to the intent and spirit of the law. *In exceptional cases,* where business conditions offer less than full time employment (8 hours a day, 48 a week), *a regular schedule of hours shall be arranged* between employer and employee . . . [so] that she may not be deprived of arranging for additional employment elsewhere.[45]

In striking contrast to these half-hearted attempts at amelioration is the November, 1918, decree of the California commission. Here for the first time we have a recognition of the principle that

consin order (June, 1919) omits the mention of a weekly norm at all: "No employer shall employ any experienced female at a wage rate of less than 22 cents per hour."

[44] The same provision is to be found in the more recent decrease for canning and candy-making, also seasonal: July, 1919. (See *Massachusetts Minimum Wage Commission Bulletins* 18 and 19.)

[45] I. W. C. Rulings, Form 17A (italics mine). The general War Emergency Order of September, 1918, adds the following clauses: "Every . . . firm . . . offering less than full time employment to female employees in any . . . trade . . ., shall post in a conspicuous place in the establishment a proper schedule of hours to be observed, for such period of time in advance as the Industrial Welfare Commission shall in its discretion determine, not later than noon of the *preceding* day." (I. W. C. Order 18, Sept. 10, 1918; italics are mine.)

it is the employer who is responsible for keeping the employee's supply of work steady. The decree reads:

> No person, firm, or corporation shall employ, or suffer, or permit an experienced woman or minor to be employed in any manufacturing industry at a rate of wages less than $10 for a 48-hour week ($0.21 per hour). *If any employer does not provide the full 48 hours* of employment during *any* week, he must pay to all experienced adult and minor workers not less than *$0.25 per hour* for the time worked.[46]

It will be seen, of course, that this California scheme, a "penalty differential" we might call it, does not help the worker who is laid off for a full week or more. In fact, if the differential were made very pronounced it might well encourage an employer in a seasonal industry (such as candy, millinery, or paper boxes) who was faced with the alternative of using all of his force on part time or using only a portion of them on full time, to choose the latter, and lay off as many as possible so as to be able to employ the remainder at the full time rate. Employments with a "peak load" on certain days of the week would, however, be materially bettered. Thus the laundry industry could not longer dock its employees for the short time provided them on Mondays and Saturdays.

A method that indirectly attacks the longer-time seasonal industries has, however, still more recently been introduced by the Wisconsin commission. Their noteworthy first wage order (June, 1919) provides that: "In seasonal industries operating only for a few months during the year no learning period is recognized, and all female and minor employees . . . shall be paid . . . [the full experienced adult minimum]."[47] Since in ordinary establishments lower rates may be paid to as many as 25 per cent of the employees, this means a very real penalty for the seasonal trade.[48]

[46] Quoted in *Monthly Labor Review,* Feb., 1919, p. 192 (italics mine). Even more elaborate provisions are made in the Mercantile Order of June, 1919, whereby part time workers receive 35 cents an hour instead of 28.

[47] Industrial Commission of Wisconsin, Order of June 27, 1919, sec. 4. It should, however, be noted that the order explicitly omits all provision for the chronically short-hour industry. In section 1 of the "Findings of Fact" we read: "Many items in the cost of living of female and minor employees vary directly with the number of hours they are required to work. Those who have short hours of labor . . . having time to do much work for themselves . . ." etc. Section 1 of the order proper accordingly reads baldly: "No employer shall employ any experienced female or . . . minor . . . at a wage rate of less than 22 cents per hour."

[48] On the Wisconsin scale it would amount to about 3 to 4 per cent of the wages bill.

It would, however, doubtless be advisable to assess industries that are notoriously seasonal even more directly, by raising their general minimum for experienced workers as well. This, on a weekly basis, was the system adopted by Australian boards for the highly irregular occupation of dock laborer. "In setting the minimum hourly rate . . ., the necessary cost of a week's living was divided by the average number of hours of work obtained weekly."[49]

This system has also been adopted by Massachusetts in her recent ruling on office cleaners (January, 1919).[50] This ruling is in its way quite as remarkable as the ones quoted from California and Wisconsin. Here the commission had found by previous investigation that the average number of hours worked per week at the occupation was only 36, and that four fifths of the women worked at night. The new ruling provides a 30-cent hourly rate for night work and a 26-cent rate for day work. On the basis of the full legal 54-hour week, even the day rate would yield $14, whereas, the budget agreed to by the board amounted to only $11.54. It was therefore the typical 36-hour worker whose case was really being provided for. True to Massachusetts tradition, she would receive somewhat less than the budget allowed, *viz.*, at the 30-cent rate, $10.80 a week, and at the 26-cent rate, $9.26. These are not very munificent sums, but the recognition they show of the short-time problem is extremely important.

However, the idea suggested by the California decree, of making the rate directly enforceable upon the individual employer who fails to provide full work, *and upon him alone*, seems too good to lose sight of. Perhaps a combination of both methods would be possible, namely a slight penalty for the habitually seasonal or short time industry as a whole in the shape of a higher hourly rate, and an additional differential for the employer whose work was unusually irregular.[51]

[49] *New Statesman,* June 6, 1914, p. 263, quoted in Commons and Andrews, *Principles of Labor Legislation,* p. 182.

[50] See *Monthly Labor Review,* Apr., 1919, pp. 186-7.

[51] This could be assessed in some such way as the one originally outlined by the chairman of the first Massachusetts brush board (quoted in *Annual Report of New York Factory Investigating Commission,* vol. VI (1915), appendix IV, p. 633): "Each weekly pay day the minimum weekly rate set by this Board shall be multiplied by 10, and if the total earnings during that 10-week period immediately preceding each weekly pay day do not equal that amount, the difference shall be paid her each week." A simpler method, however, in the

A point which it is important to stress, while dealing with the matter of hourly rates, is that it is closely bound up with the question of the legal hours of employment in each state. The same weekly minimum may mean very different things to both employer and employee if the number of hours for which it is being paid is different. Thus Oregon in April of 1918 changed her minimum for manufactures from $8.64 to $11.61. Meanwhile her neighbors, Washington and California, were paying only $10.[52] At first the employer members of her board protested at this disproportionate advance, but it was successfully pointed out to them that, since both Washington and California were limited to a 48-hour week, while Oregon worked 54, the respective wage rates for the three states would be rendered practically equal, thus:

Washington and California $10.00 a week ÷ 48 hours = 21 cents per hour.[53]
Oregon ..... $11.61 a week ÷ 54 hours = 21½ cents per hour.

The close connection between hours of work and wages per hour is doubtless one very important reason why so many of our states have assigned hours as well as wages to the jurisdiction of their minimum wage ("industrial welfare") commissions. Where no direct connection between the hour-fixing and the wage-fixing machinery of a state exists, it is always possible to reduce the hourly wage by increasing the number of hours for a given industry. Thus a representative of the Washington commission writes: "During one session of the Legislature the . . . Association . . . attempted to secure an amendment to the woman's 8-hour law providing for an emergency clause allowing overtime. Had this passed, it would have indirectly reduced wages, as all wages are

opinion of the writer would be to assess each employer at an hourly rate that roughly corresponds to the average per capita short time that he had provided during a specified period in the recent past. Thus an employer who had averaged 20 per cent fluctuation above that allowed for in the general trade estimate, would have to pay a 20 per cent differential on his minimum hourly rate. (Needless to say "short time" in the above sense does not include time lost by the worker's own fault, *i.e.*, voluntary absenteeism.)

[52] The California decrees at this time did not cover manufacture, but $10 was the rate for stores, etc.

[53] Incidentally the Oregon members were made to realize that hitherto the advantage had lain very heavily on the other side and that, nevertheless, their neighbors had not been ruined. Up to this time, when the Washington and California rates were already $10, or 21 cents per hour, the Oregon rates for manufacture had ranged from $8.25 to $8.64, or 15½-16 cents per hour. (The higher rate was for the city of Portland.)

based on an 8-hour day and 6-day week."[54] And again, "The question of seasonal industries, such as fish and fruit canning do not come under the Factory Orders and the wage[55] applies to them." The converse of this connection is seen where the legal hours of work are suddenly reduced. The wage per hour is automatically raised. Thus Massachusetts' adoption (1919) of a 48-hour week in place of a 54, gives her women nearly a 13 per cent hourly increase.

13. *Special class of workers: the defective.* Besides the difficulties attendant upon the setting of the regular rate for normal adult women, our minimum wage commissions have to face the problems of three special classes of workers generally recognized as sub-standard: the young, the inexperienced, and the defective. Of these the defective have thus far proved much the easiest to deal with.

In all our states save Massachusetts, Wisconsin, and Kansas the class is narrowed to include only adult women who are physically defective.[56] The method of handling these cases is always by individual license, issuable by the commission direct. The wage boards naturally have nothing to do with them. Each license sets a special sub-standard rate for the worker concerned, which may be temporary or permanent according to the nature of the defect and the wording of the law. Some laws limit the proportion of defectives that may be employed in any one establishment to one in ten.

So far the total number of licenses issued by the active minimum wage states has been surprisingly small. As one secretary writes, "Employers evidently do not want to ask for defectives' permits unless there is no question about the employee being unable to make a living because of . . . her defect." Washington reports only fifty in five years of commission activity. The California commission states in respect to the laundry industry, where infirm workers are more easily accommodated than elsewhere: "No license has been granted to any woman except upon the signed statement of a licensed physician that the applicant was not able

[54] Letter to the writer, Oct. 26, 1918.

[55] *I.e.*, the rate per hour. This gives a higher weekly wage to these long-hour industries.

[56] In Wisconsin, however, it applies to "any female or minor unable to earn the living wage," and in Massachusetts and Kansas to "any employee . . . of less than ordinary ability. . . ."

to work to normal capacity at ordinary tasks, either because of age or physical disability." Even then no license is granted for less than $8. . . . In November, 1918 less than 3 per cent of the total employees. . . . [held] such permits."[57]

None of these states report any difficulty because of applications from the mentally defective. In many cases of course the mentally defective would also be physically handicapped, and thus receive their classification without question. Of the six licenses thus far issued by the Minnesota commission, three were for women thus doubly handicapped. Our informant states that no case of purely mental defect has as yet arisen. The Washington commission reports similarly: "We have had no application from a mentally subnormal person."

In view of the large number of mental defectives known to be at large in our population, this state of affairs is certainly surprising. Perhaps the majority of them find their way into simple piece work operations where their reduced output can affect no one but themselves.[58] Others doubtless drift about from job to job, never making themselves valuable enough to an employer to cause him even to try for a license for them. But a large remainder appear to be still unaccounted for. Can it be that much of our industry is so simplified and routinized that even a moron is good enough to support herself at it? Nay, possibly that she may in some respects be preferable to her normal and therefore more restless sister?

In the future without doubt the problem of the defective will grow more acute, as minimum wage legislation is extended to our more thickly settled industrial states, and as the minimums in our existing rulings are raised to something nearer a full living wage. A clear understanding of the ground of licensing would then be imperative. The Massachusetts-Kansas-Wisconsin system of "wide open" licenses would doubtless offer increasing dangers; while a definition that strictly excluded all but the physically incapacitated would doubtless err equally on the other side.

As the number of licenses grows, opportunities for constructive

[57] *Third Biennial Report I. W. C. of California,* p. 70.

[58] However, in a state like California they would probably be discovered even there, if large numbers congregated in any one branch of piece work, for California has the provision in her ruling on manufactures that 66 2/3 per cent of all pieceworkers employed by any one establishment must earn over the weekly rate. (I. W. C. Order No. 11, amended 1919, sec. 8(d).)

social work on the part of the commissions should grow also. They can become the logical centralizing agency, the clearing house, for putting adult women defectives in touch with other appropriate agencies. The system of renewable licenses will enable them to keep track of the progress of each case, while threat of forfeiture gives them unusual persuasive power.

13. *Minors and apprentices.* The problem of the untrained and the immature worker is far more puzzling. How long does it take a woman to learn a trade? (What trade?) How much longer does it take her if she is not a woman but a young girl? (In which trades does age count for most?) Are there any trades in which an experienced girl under eighteen is as useful as if she were grown? What is a trade anyway? How far shall one go in subdividing our complicated industry to tell when a woman who is changing her position must begin at an apprentice wage over again? These are some of the questions that have gradually been brought home to our commissions in the course of their operations.

The method of administering the problem is unfortunately somewhat complicated. In most of our laws it is provided that both these classes of workers shall receive special rates, but that, while the rate for minors shall be fixed by the commission direct, that for adult learners shall be reached by the usual board machinery.[59] It may well be that some of the planlessness of which we shall hereafter have cause to complain is due to this divided responsibility. On the face of it, the two problems are so closely related that it seems only reasonable to have the same agency responsible for both. That agency, in view of the extreme complexity of the subject, would naturally be the central commission. However, the technical trade advice of the lower boards could be made extremely valuable to the commission, provided it were not made finally binding.

The Oregon apprenticeship rulings show very interestingly how one commission, or, if you will, one group of boards, has gradually been awakening to the complexity of its task. In the 1913 ap-

[59] The laws of two states, California and Washington, make no express distinction between the wages to be paid the skilled and the unskilled; and California makes no distinction between minors and adults. Both these states, however, empower the commission to issue individual apprenticeship licenses. In practice this provision appears to have made for greater flexibility of rulings. (Note, however, that in her general War Emergency Order of November, 1918, Washington chose to ignore all differences of skill—the flat rate of $13.20 being supposed to apply to all women and the $9 to all minors.)

prenticeship conferences Oregon merely issued a flat-rate minimum of $6 per 54-hour week for all industries, "and the maximum length of time such workers shall be considered inexperienced *in any one* industry, shall . . . be . . . one year."[60] Here we have no attempt to define what is to be considered "one industry," and no distinction between apprentices who are brand new and those who are almost completely experienced. Moreover, the learning period itself is extremely long. If such length had any justification at all, one would suppose it could only be on the ground of acquainting the learner with a good many branches of a rather difficult trade.

The commissioners themselves, however, apparently had no clear idea on the subject, for they seem to have done nothing to prevent employers from taking advantage of the loose wording of the ruling. By 1916 such grave abuses had sprung up that the new conference then in session was instructed to consider a refinement of terms. "Some employers dismissed girls as soon as the first year had expired or shifted them to slightly new work in different departments, thus starting them on a second year of apprenticeship at $1 a day."[61] It apparently never occurred to the conference to go so far as to require the new employer to pay the girl what she had last been receiving or to force the old employer to increase the girl's wage at the expiration of a year of any sort of service with him. Instead, they tried the method of inducements: they adopted a rising scale, beginning at $6 as before, but increasing $1 every four months, so that by the end of the year the apprentice would be receiving very nearly the full adult minimum, and the temptation to dismiss her would be very much reduced. This device of the graduated scale is now in use by practically all our commission states.[62] It operates as an incentive to the employee to stick to her job as well as to the employer to retain her.

By 1918 Oregon had decided to attempt a refinement of the graduated scale. When it came to raising the general level of

[60] Quoted in *The Oregon Minimum Wage Law* (Reed College A.B. thesis), by Samuel B. Weinstein, p. 21 (italics mine).

[61] *Ibid.*, p. 31.

[62] California in her latest order (No. 5, amended June, 1919) adds the express warning, "Learners' permits will be withheld by the Commission where . . . firms . . . make a practice of dismissing learners when they reach their promotional periods."

wage rulings in accordance with war prices, the mercantile conference decided to abandon the policy of fixed 3-month periods and to substitute irregular periods, the first very much shorter than the others, to encourage the new hand to overcome the inertia of the first few weeks; moreover they decided to shorten the total apprenticeship term for their industry from a year to eight months.[63]

All the Oregon 1918 conferences finally realized the necessity of meeting squarely the abuse of shifting girls about from one department to another. They accordingly had the commission issue the following ruling: "After any woman shall have completed any prescribed period of service as an apprentice, she shall not thereafter, *while working for the same employer*, be paid a wage less than that prescribed for the next succeeding period, unless a permit therefor shall be issued by the Industrial Welfare Commission."[64]

So far Oregon has not issued any ruling to prohibit a *new* employer from engaging a partly experienced girl at a beginner's wage. Discussion at present centers about the question of how greatly variations in individual firm methods justify at least a short initial term of fresh apprenticeship.[65] Wisconsin and Arkansas alone have faced the issue unequivocally. The Arkansas flat-rate law (1915) states: "All time served as inexperienced workers or apprentices shall be cumulative," while the Wisconsin commission's first wage order (June, 1919) reads: "Employees shall be deemed experienced after six months of employment in the trade or industry whether for the same employer or different employers."[66]

In general it may safely be said that the problems of apprenticeship have not received the thorough and dispassionate study which they demand; that, in fact, they have been slighted as compared

[63] This system has been perpetuated under the new 1919 rulings. The mercantile scale now runs: first month $9 per 48-hour week; next three months, $10.50; last four months, $12; full adult wage, $13.20. A somewhat similar system had previously been in force in Washington for the laundry and telephone industries. (Oregon I. W. C. Order No. 37, Aug. 12, 1918, sec. 3.)

[64] I. W. C. Order No. 36, Apr. 12, 1918, sec. 5 (italics mine).

[65] Some commissions take the mild precaution of requiring the old employer at any time to furnish the apprentice upon request with a certificate showing the length of her service with him. Arkansas contains this provision in her statute.

[66] I. W. C. Order of June 27, 1919, sec. 4.

with the problems of the experienced worker. Very probably the chief fault lies in a lack of vital interest on the part of the employees' representatives—their own apprenticeship period lying so very far in the background of their memory, combined with a lack of intimate knowledge of trade processes on the part of the representatives of the public, and a natural desire on the part of the employers to "get a bit of their own back" where they find least opposition to it. Unquestionably the great majority of our apprenticeship periods have been too long, the wages too low, the instruction indifferent, and the opportunity for abuses in the way of repetition of half completed periods too little guarded against.[67]

It would take a very thorough revamping of our present industrial methods to give inexperienced women the most rapid and thorough training of which they are capable; but surely the process could be greatly speeded up by the mere mechanical shortening of the learning period, forcing the employer to concentrate whatever training he did propose to give into a shorter time, and protecting him with low initial wages but a rapidly rising scale, on the one hand, from the temptation of discharging the partially trained, and, on the other, from the inclination of the partially trained themselves to wander off and seek a fresh trade.

The extent to which the length of the apprenticeship period may be a matter of local custom—or rather of local inertia—is shown by a comparison of three recent laundry awards of Massachusetts and Arkansas. In Massachusetts all apprenticeship periods are extremely long (probably yet another reflection upon her system of non-enforceable awards), ranging from one to a full two years.[68] Her laundry award whereby workers are "held experienced after one year, if absences have not been of unreasonable duration," is therefore by no means exceptional.[69] In Arkansas,

[67] One abuse very commonly guarded against is the employment of a disproportionate number of apprentices in any one establishment. Thus the new California rulings for . . . stores and factories provide that: "The total number of learners . . . (adult and minor combined) shall not exceed 33 1/3 per cent of the total number of [workers] employed" (sec. 3). See I. W. C. Orders 5 and 11 amended, 1919, secs. 1(e).

[68] See table, "Minimum Wage Regulations for Women, January 1, 1917," in *Oregon Minimum Wage Brief*, p. 76.

[69] Thus millinery (Dec., 1918) requires two years, candy-making (July, 1919) a year and a half, and even canning (July, 1919) a year! Contrast with this last the recent Wisconsin decree: "In seasonal industries operating only for a few months during the year no learning period is recognized, and all female and minor employees . . . shall be paid . . . [the full experienced adult wage]." (Minimum Wage Order No. 1, June 27, 1919, sec. 4.)

by the 1915 flat-rate statute, the apprenticeship period for all trades (laundries therefore included) was set at six months, just half that of Massachusetts. Yet when in the summer of 1918 the National War Labor Board came into that state to settle the laundry difficulties in Little Rock, it not only raised the whole wage scale tremendously, but promptly reduced the six-month period to *thirty days.*[70] Here we have a variation in three typical rulings of 1200 per cent.[71] Which of the three was right?[72]

15. *Some special problems of minors.* For the workers under eighteen, the difficulty of securing adequate training in the shortest possible time is complicated by the desirability of keeping the younger of them out of industry altogether. A high initial wage, it may cogently be argued, directly encourages the small boy or girl of fourteen to leave school and go to work. On the other hand, a very low initial wage encourages the employer to seek out all the immature help he can. Which is stronger, the inducement to the child and its parents or the inducement to the employer?

Most of our commissions have taken a middle ground, apparently assuming that while it is their primary duty to protect the child from crass wage exploitation, they need not scale up his wages too meticulously in accordance with his probable productivity. Thus Oregon's 1919 orders assigned all minors between fourteen and fifteen a flat-rate of $6, those between fifteen and sixteen, $7.20.[73] In Washington, for two years previously, the flat-

[70] National War Labor Board, Docket No. 233, *Joint Report of Section* in re *Employees* vs. *Laundry Owners, Little Rock, Arkansas.*

[71] An almost equally striking variation is found in the laundry rulings (prior to Sept., 1918) of the three Pacific coast states, where conditions of work might be considered more closely equivalent and where no outside agency has interfered. In Oregon the period was one year; in California, fifteen months; and in Washington, two months! The California period has now been reduced to six months, while Washington's 1918 rulings recognize no learning period at all.

[72] The arguments for short time training are certainly borne out by the experience of the U. S. Shipping Board, which during 1918 carried on apprenticeship courses for all the various difficult shipyard trades. The learners, who "were drawn principally from unskilled shipyard work and from manufacturing," were after their training able in the main to hold their own with experienced journeymen." Yet "Statistics from twenty-one yards indicate that *the average training period for all men was nineteen days.*" (See P. H. Douglas and F. E. Wolfe, "Labor Administration in the Shipbuilding Industry during the War," *Journal of Political Economy,* May, 1919, pp. 378-9.)

[73] Oregon I. W. C. Order No. 46, Aug. 12, 1919.

rate for all under sixteen was $6.[74] In their wartime emergency conference, the Washington commission, however, appears to have swung over to the full productivity idea: its minimum for all minors is now $9, with a dollar increase every six months of employment.[75] In British Columbia, the commission has taken the commendable stand of trying to keep the girl under sixteen out of industry altogether by "preventing, except under special license, the employment of such girls" and by "collaborating with the educational authorities to raise the age for leaving school [and] . . . to provide more satisfactory methods for industrial . . . education.[76]

For minors over sixteen there seems no good reason to prolong the low-wage period beyond what is absolutely necessary by reason of lack of skill. All our commissions now arrange a rising apprentice scale for these workers, but in most states the rise is unduly slow. Thus in Oregon, while the initial wage for minors over sixteen is nearly as high as that for women learners (*viz.*, $8.50 instead of $9), the subsequent advance toward the full minimum takes three times as long. "For the purpose of determining a rising scale for minor apprentices the working time of female minors between sixteen and eighteen years shall be divided into periods of three months each. Each period . . . shall be considered the equivalent of one month in the corresponding period of the apprenticeship of the adult worker."[77] There are no exceptions to this rule. Consequently no girl under eighteen, however proficient she may be and however long her trade experience (it may be almost four years), can ever command the adult minimum. Minors over sixteen who are not apprentices also begin at $8.50 and are advanced 50 cents every six months.

In Massachusetts the rise is even slower. There in the retail store industry no girl, however experienced, can command more than an apprentice wage until she is over nineteen; while in women's clothing factories she must be nineteen and a half.

In California, on the other hand, mere immaturity as such is not allowed to affect the status of a worker once she is partially experienced. Here in the laundry, and hotel, and restaurant industries the girl of from fourteen to eighteen starts on an exact par

[74] Washington I. W. C. Order, Sept. 14, 1917.

[75] *I.e.*, until the adult minimum of $13.20 is reached.

[76] Letter to the writer by a close associate of the commission, Jan. 17, 1919.

[77] I. W. C. Order No. 46, sec. 2.

with her adult sister; in stores, factories, and offices she starts at a dollar lower wage, but after a given initial period continues on through the regular stages of adult apprenticeship at adult wages; only in "unskilled and unclassified" occupations does she remain permanently below adult par.[78]

In Wisconsin the exceptionally proficient minor is safeguarded by the provision: "Permit children producing the same output as employees in a higher wage classification shall be paid not less than the minimum wage rate for such class."[79]

Conclusion

In summing up this review of American minimum wage administration, it may be well to group our recommendations for the future under three definite heads: first, the need for a real living standard; second, the need for a more flexible standard; third, the need for centralization of administrative responsibility.

I. *A real living standard.*

1. First and foremost among our needs is undoubtedly that of a clear, unequivocal, basic standard of living for the working woman, a standard that shall take account of the whole range of her necessities, not only day by day but year by year.[80] For this we should have a *standard budget*, formulated preferably by our federal Bureau of Labor Statistics, revised by them periodically in accordance with changes in the cost of living, and adjustable by local boards and commissions to local conditions.

2. To reduce this budget to terms of *weekly wage rate*, we must have (a) a clear-cut policy on the part of boards and commissions that the "living wage" shall mean a "living income" the year round; (b) more accurate information by these bodies as to local irregularities of employment; (c) a simple method of advancing hourly rates by "irregularity differentials" whenever trades or individual establishments fail to provide full time work.

3. A necessary corollary to such a full living standard would be the extension of our special provisions for sub-standard workers. (a) For defectives, who would now of course include the

[78] For three weeks she receives $8 instead of the adult's $10, and thereafter $10 instead of the adult's $13.50.

[79] In Order of June 27, 1919, sec. 3.

[80] For a detailed discussion of the components of such a standard see the writer's forthcoming article, "The Standard of Living for Working Women: a Criticism of Current Theories," in the *Quarterly Journal of Economics*.

mentally incapable, the double system of individual licensing plus limitation of numbers in any one establishment might well be revised to include a third element, namely, the selection of a series of especially "approved" occupations, in which such workers could be allowed to congregate without limit; each plant in the "approved" list being subject to special supervision by the commission—all defective workers meanwhile, whether working in an "approved" establishment or at large, to be inspected and relicensed periodically. (b) For *inexperienced workers and minors* we need a more scientific series of statewide "rock-bottom" minimums, graded according to age; and above these, a series of specially adjusted apprentice minimums that should be as varied as the trades they represent. That is, it should be left to the discretion of the commission and boards whether for a given trade there should be any distinction at all between the comparatively new and the old hand, or between the youthful and the adult; and if there should, just what ought to be their relative rates of advance. The number of apprentices allowed in any one establishment should doubtless continue to be limited.

II. *A flexible standard.*

Next only to the need for a standard that shall be adequate at the outset, is the need for a greater flexibility in its application. I have already pointed out the need for (1) more rapid revision of established rates in times of sudden price changes, and have suggested that for specified periods of a year or so the commissions be given *ad interim* power to revise existing rates. They could readily do this in accordance with the cost-of-living index numbers which the Bureau of Labor Statistics could furnish them. Two other devices for increasing flexibility are, however, no less important. These are (2) the forestalling of bad wage conditions that are as yet only apprehended, by empowering the commission to issue rulings for trades that may at the time still be on a living basis; and (3) the easing off of radical advances for the employer by permitting the commission under exceptional circumstances to distribute the scheduled advance in wages over a specified period. Reform number three is a refinement over the method now in force in Washington (where the application of the whole rate as such may be postponed), and is to be found in its present form in the excellent new British Trades Board Act of 1918.[81]

[81] It was also used, although without express legal provision, by the original

Number two occurs in the revised British statute alone.[82] Both these innovations are of great significance; the anticipation of low wages is especially valuable in a time of sudden oversupply of labor such as has occurred in many industries since the close of the war; while the gradual application of certain rates is sure to become a practical necessity as the living-wage idea becomes more firmly established and radical advances grow more common. Where some compromise with purely financial considerations appears inevitable, this form is infinitely preferable to the current one (of setting up a final rate that is sub-standard), since this proposed device is self-remedying and deceives no one.

III. *Centralization of administrative responsibility.*

Finally we need a greater concentration of power and of the responsibility that goes with it if our commissions are to operate effectively in the larger industrial states. The writer has already pointed out the advantages that accrue from (1) empowering the commission upon occasion to *overrule the advice of the boards* and (2) *giving the executive officer of the commission a voting membership* on both the boards and the commission itself. The combination of these two devices should go far toward helping to organize the information at the commission's disposal and bringing it to bear impartially upon the formation of a consistent policy.

3. A more radical change in organization that might prove very advantageous in our larger states would be to place the whole minimum wage commission under the charge of the existing Department of Labor, making of it an *independent bureau* with a special *Deputy Commissioner of Labor at its head.* He would then become the paid executive officer of the commission, taking

Massachusetts Brush Makers' Wage Board in 1914:—"The rate to go into effect at once shall be 15½ cents an hour. At the end of a year's time the rate shall automatically become 18 cents. . . ." (*Second Annual Report of the Minimum Wage Commission of Massachusetts,* p. 9.) Ordinarily Massachusetts follows the Washington method. Thus the candy decree of last July does not go into effect until January.

[82] *The Monthly Labor Review,* Nov., 1918, paraphrases and comments upon these two provisions as follows: "The new act permits the Minister of Labor to apply its provisions to any trade in which it appears to him that no adequate machinery exists for the effective regulation of wages. *It is thus possible to forestall an apprehended fall in wages in view of changes or anticipated changes in conditions of employment.* . . . Rates may also be fixed to come into operation successively on the expiration of specified periods, and variations in rates may be declared operative only during specified periods."

over the representative duties we were just now assigning to the secretary. This system would have the advantage of placing freely at the commission's disposal all the information that could be gathered by the department[83] as well as its full power of inspection and enforcement without giving up the commission's local autonomy.[84] Its possible disadvantage would be the transfer to the commission of any inefficiency that lurked in the department.

4. A most significant centralization in administrative methods (as distinct from organization) that already has taken place in four of our states is the widening in scope of wage awards. As has been pointed out, the fixing of statewide adult rates, combined with carefully specialized trade provisions for the inexperienced, marks the opening of a new era in scientific standards.

5. A useful precursor to such standardization would be the regular holding of *regional conferences* for groups of states that face the same economic problems. Such a conference was held tentatively and informally between the three Pacific coast states at the invitation of the Washington commission, just before that body called together its own war emergency conference. It is highly probable that it was influential in the subsequent raising of the California and Oregon rates to the uniform Washington level. Similarly, when once the perennially reintroduced New York and Pennsylvania bills become law, a North Atlantic conference between these states and Massachusetts (and perhaps by that time New Jersey) would certainly appear to be in order. In view of the sometimes wide variations of the law between neighboring states, it would of course be best not to introduce any formality into these meetings, but to have the understandings arrived at mere "gentlemen's agreements." As such they should go far to allay interstate misunderstandings and break the force of the constantly recurring employers' argument in regard to throttling competition. They should certainly serve as a spur to the laggard states in each group.

In making all these specific recommendations we have not forgotten that at the basis of all our reforms must lie a growth of

[83] Most of our existing laws provide that the department shall collect data for the commission upon request, but so long as the two agencies remain separate this is apt to cause friction. The new Texas law overcomes this difficulty by providing that the head of the bureau of labor statistics shall himself serve as chairman of the new commission.

[84] The new North Dakota law gives the task of wage setting into the hands of the existing workmen's compensation bureau.

public confidence and interest in the work of the commissions. The chain of minimum wage activity can be no stronger than its weakest link, which is the assistance every commission has to receive from the public—in the form of adequate representation on its boards, attendance at its hearings, support from the courts, and, above all, adequate appropriations from the state legislature. The financial difficulties under which some of our most progressive commissions have been struggling make the degree of their success really astounding.[85] The commissions themselves must of course do all they can to extend the field of their publicity. Whenever, as in the case of Massachusetts, they have been blessed with sufficient funds, they have indeed gone into print very vigorously, if somewhat learnedly. But the larger and less dignified task of widespread popular appeal must necessarily rest with the outside friends of the movement. If half the energy that habitually goes to pushing minimum wage campaigns were carried over and devoted to popularizing the work of the commissions when once they have been established, the whole range of problems we have been discussing would be immensely simplified.

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[85] Is it for example generally known that the Oregon commission has an annual appropriation for *all* purposes (including secretary's salary, office expenses, investigations, rent, publicity, inspection and inforcement!) of only $3,500?